

**Introduced by Senator Dutton
(Coauthors: Senators Cannella, Correa, Huff, Rubio, and
Strickland)**

February 18, 2011

An act to amend Sections 39619.7, 43024, and 43212 of, and to add Sections 43103 and 43103.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 724, as introduced, Dutton. State Air Resources Board: penalties: mobile source certification.

(1) Existing law grants to the State Air Resources Board the primary authority for the control of air pollution from vehicular sources. The state board tests and certifies new motor vehicle models for compliance with air pollution emissions standards developed by the state board.

This bill would require an application for certification of a new motor vehicle or engine, including off-road equipment and engines and aftermarket parts, to be approved or disapproved pursuant to specified requirements. The bill would authorize the executive officer of the state board to approve certification of a new motor vehicle or engine, including off-road equipment and engines and aftermarket parts, for any model year that has been certified by the federal Environmental Protection Agency without additional testing, if the state emissions standards for certification of that vehicle, equipment, engine, or part are no more stringent than the federal standards on which the federal Environmental Protection Agency certification was based.

The bill would require the state board to create a separate, short form certification application template for a 2013 model year and later carryover vehicle, equipment, or engine, as defined. The bill would

require this application form to contain a section for the applicant to certify, under penalty of perjury, that any change in an emissions-related component part has not resulted in an increase in emissions from the prior certified model year. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

(2) Existing law requires a written communication from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information.

This bill would require this information to include specified information relating to quantifying excess emissions. The bill would require the state board to consider in assessing a penalty whether there were excess emissions above an applicable standard and, where practicable, to quantify these excess emissions.

(3) Existing law subjects any manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board to a civil penalty of \$50 for each vehicle that does not comply with the standards or procedures.

This bill would prohibit the imposition of any penalty in addition to this penalty for a violation that does not cause excess emissions above an applicable standard, including violations involving a carryover vehicle, equipment, or engine as defined.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 39619.7 of the Health and Safety Code
2 is amended to read:
3 39619.7. (a) A written communication from the state board
4 alleging that an administrative or civil penalty will be, or could
5 be, imposed either by the state board or another party, including
6 the Attorney General, for a violation of air pollution law, shall
7 contain a clear explanation of all of the following:

1 (1) The manner in which the administrative or civil penalty
2 amount was determined, including the aggravating and mitigating
3 factors the state board considered in arriving at the amount, and,
4 where applicable, the per unit or per vehicle basis for the penalty.

5 (2) The provision of law or regulations under which the alleged
6 violator is being assessed the administrative or civil penalty,
7 including the reason that provision is most appropriate for that
8 violation.

9 (3) (A) Whether the administrative or civil penalty is being
10 assessed under a provision of law that prohibits the emission of
11 pollution at a specified level, and if so, a quantification of the
12 specific amount of pollution emitted in excess of that level, where
13 practicable. This quantification may be based on estimates or
14 emission factors. *The state board shall provide an opportunity to*
15 *the regulated person or entity to submit information regarding the*
16 *amount of pollution emitted in excess of an applicable standard*
17 *or the lack of any emissions above an applicable standard.*

18 (B) *Whether quantifying excess emissions was practicable,*
19 *whether a regulated person or entity submitted information*
20 *quantifying excess emissions, and the manner in which the penalty*
21 *was assessed to account for the magnitude of excess emissions or*
22 *the lack of excess emissions, as required by subdivision (c) of*
23 *Section 43024.*

24 (b) The information described in subdivision (a) and all final
25 mutual settlement agreements reached between the state board and
26 a person alleged to have violated air pollution laws shall be made
27 available to the public.

28 SEC. 2. Section 43024 of the Health and Safety Code is
29 amended to read:

30 43024. (a) No later than March 1, 2011, the state board shall
31 publish a penalty policy for civil or administrative penalties
32 prescribed under Chapter 1 (commencing with Section 43000) to
33 Chapter 4 (commencing with Section 43800), inclusive, and
34 Chapter 6 (commencing with Section 44200).

35 (b) The policy shall take into consideration all relevant
36 circumstances, including, but not limited to, all of the following:

37 (1) The extent of harm to public health, safety, and welfare
38 caused by the violation.

39 (2) The nature and persistence of the violation, including the
40 magnitude of the excess emissions.

1 (3) The compliance history of the defendant, including the
2 frequency of past violations.

3 (4) The preventive efforts taken by the defendant, including the
4 record of maintenance and any program to ensure compliance.

5 (5) The innovative nature and the magnitude of the effort
6 required to comply, and the accuracy, reproducibility, and
7 repeatability of the available test methods.

8 (6) The efforts of the defendant to attain, or provide for,
9 compliance.

10 (7) The cooperation of the defendant during the course of the
11 investigation and any action taken by the defendant, including the
12 nature, extent, and time of response of any action taken to mitigate
13 the violation.

14 (8) The financial burden to the defendant.

15 (c) *The state board shall consider in assessing a penalty whether*
16 *there were excess emissions above an applicable standard and,*
17 *where practicable, the state board shall quantify these excess*
18 *emissions.*

19 SEC. 3. Section 43103 is added to the Health and Safety Code,
20 to read:

21 43103. (a) (1) Within 30 days after receipt of an application
22 for certification of a new motor vehicle or engine, including
23 off-road equipment and engines and aftermarket parts, the executive
24 officer of the state board shall inform the applicant, in writing,
25 either: (A) that the application is complete and accepted for filing,
26 or (B) that the application is deficient, identifying the specific
27 information required to make the application complete.

28 (2) Within 15 days after receipt of additional information
29 provided in response to a determination by the executive officer
30 of the state board that an application for certification of a new
31 motor vehicle or engine, including off-road equipment and engines
32 and aftermarket parts, is deficient, the executive officer shall inform
33 the applicant, in writing, either: (A) that the new information is
34 sufficient to make the application complete and that the application
35 is accepted for filing, or (B) that the application is deficient,
36 identifying the specific information required to make the
37 application complete.

38 (3) Within 90 days after an application for certification of a new
39 motor vehicle or engine, including off-road equipment and engines
40 and aftermarket parts, is accepted for filing, the executive officer

1 of the state board shall act to approve or to disapprove the
2 application.

3 (b) (1) An applicant may inform the executive officer or the
4 ombudsman of the state board, in writing, if the requirements of
5 subdivision (a) have not been met.

6 (2) The executive officer and the ombudsman shall ensure that
7 action to approve or disapprove the application takes place within
8 30 days after receipt of the notice described in paragraph (1).

9 (c) (1) If the application for certification of a new motor vehicle
10 or engine, including off-road equipment and engines and
11 aftermarket parts, is for a carryover vehicle, equipment, or engine,
12 the executive officer shall approve or disapprove the application
13 within 30 days after the application is accepted for filing.

14 (2) If an application described in paragraph (1) is not approved
15 or disapproved within 210 days after the application is accepted
16 for filing, the application is deemed to have been approved by the
17 executive officer.

18 (3) For a carryover vehicle, equipment, or engine that has been
19 approved pursuant to this subdivision, the entire model year is
20 deemed to have been certified with the approval being effective
21 on the initial date when that model year began production.

22 (4) This subdivision applies to an application made on and after
23 January 1, 2012, and to an application that was filed prior to
24 January 1, 2012, and which has not yet been approved or
25 disapproved.

26 (d) The state board shall create a separate, short form
27 certification application template for a 2013 model year and later
28 carryover vehicle, equipment, or engine that shall include all of
29 the following:

30 (1) A conspicuously located section for the applicant to indicate
31 that the application is being submitted for a carryover vehicle,
32 equipment, or engine.

33 (2) A conspicuously located section for the applicant to certify,
34 under penalty of perjury, that any change in an emissions-related
35 component part has not resulted in an increase in emissions from
36 the prior certified model year.

37 (3) A conspicuously located section for the applicant to indicate
38 and provide information for any nonmaterial or minor changes
39 from the prior certified model year, including, but not limited to,
40 changes in emissions-related component parts that do not adversely

1 affect emissions compliance or performance or otherwise result
2 in increased emissions, or revised labels or warranty statements.

3 (e) As used in this section, “carryover vehicle, equipment, or
4 engine” means a vehicle, equipment, or engine certified to the
5 same emission regulations and standards as the certified prior
6 model year, if there has been no change to the subsequent model
7 year product that would increase emissions or adversely affect
8 emissions compliance or performance.

9 SEC. 4. Section 43103.5 is added to the Health and Safety
10 Code, to read:

11 43103.5. The executive officer of the state board may approve
12 certification of a new motor vehicle or engine, including off-road
13 equipment and engines and aftermarket parts, for any model year
14 that has been certified by the federal Environmental Protection
15 Agency, without requiring the applicant to submit to additional
16 testing prior to certification, if the state emissions standards for
17 certification of that vehicle, equipment, or engine are no more
18 stringent than the federal standards on which the federal
19 Environmental Protection Agency certification was based.

20 SEC. 5. Section 43212 of the Health and Safety Code is
21 amended to read:

22 43212. (a) Any manufacturer or distributor who does not
23 comply with the emission standards or the test procedures adopted
24 by the state board shall be subject to a civil penalty of fifty dollars
25 (\$50) for each vehicle ~~which~~ *that* does not comply with the
26 standards or procedures and ~~which~~ *that* is first sold in this state.
27 The payment of ~~such~~ *these* penalties to the state board shall be a
28 condition to the further sale by ~~such~~ *the* manufacturer or distributor
29 of motor vehicles in this state.

30 (b) *Notwithstanding Section 43154 or 43211, a penalty in*
31 *addition to the penalty provided for in this section shall not be*
32 *imposed for a violation of the emission standards, certification*
33 *requirements, or test procedures described in this chapter, if that*
34 *violation does not cause excess emissions above an applicable*
35 *standard, including violations involving a “carryover vehicle,*
36 *equipment, or engine” as defined in Section 43103.*

37 ~~Any~~

38 (c) Any penalty recovered pursuant to this section shall be
39 deposited into the Air Pollution Control Fund.

1 SEC. 6. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

O